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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	92077063
Party	Plaintiff Jessenia Gallegos
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Date	07/31/2023
Attachments	Petitioners ACR Closing Final Trial Brief merits.pdf(1401655 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

	)	
Jessenia Gallegos	)	Cancellation No. 92077063
	)	
Petitioner,	)	In the matter of trademark registration
	)	Registration No. 6278898
V.	)	
	)	For the mark JESSENIA
	)	
Jessenia Mills	)	Registered on February 23, 2021
	)	
Respondent	)	
	)	

**PETITIONER’S FINAL TRIAL BRIEF IN SUPPORT OF HER CANCELLATION FOR  
CONSIDERATION UNDER ACCELERATED CASE RESOLUTION AND EVIDENTIARY  
OBJECTIONS**

Jessenia Gallegos (“Petitioner”) respectfully submits this final ACR trial brief in support of her cancellation petition to the registration of the mark “JESSENIA” which is both parties' first name, shown in the U.S. Trademark Registration No. 6278898, (“Registration”), filed by Respondent, Jessenia Mills, (“Respondent” for consideration under the Board’s Accelerated Case Resolution process. Petitioner also respectfully requests that the Board consider her Motion and Brief in support for Partial Summary Judgment (filed October 29, 2021) and the Exhibits thereto as well as any declarations and testimony provided in support of her cancellation petition. Finally, Petitioner submits her expert witness Declaration and expert report (attached as Exhibit A

hereto) and Evidentiary Objections.

### **PRELIMINARY STATEMENT**

1. This cancellation proceeding became necessary when the Respondent obtained registration for Petitioner's first name "JESSENIA" and contacted music distributors of Petitioner's music to remove her music of which she has spent years prior to Respondent's use building and developing. Petitioner has proven with evidence that she was the first to use the mark in commerce. Respondent neither in her trademark registration application nor this cancellation proceeding has shown any sales of first use in commerce prior to the Petitioner. Respondent has not shown any secondary meaning in her first name under the common law.

- **Standing**

The parties stipulated and it is undisputed that the Petitioner has standing to bring this cancellation proceeding. TTABVue 27 ("ACR STIP")

- **Similarity of marks**

The parties stipulated and it is undisputed that the Petitioner and Respondent's mark of the first name JESSENIA is identical in all aspects ACR STIP

- **Similarity of goods and services**

The parties stipulated and it is undisputed that the Petitioner and Respondent offer the same goods or services. ACR STIP

- **Channels of Trade**

The parties stipulated and it is undisputed that the Petitioner and Respondent's offer their goods and services in the same channels of trade to the same customers. ACR STIP

- **Actual confusion/concurrent use of the marks**

2. The parties stipulated and it is undisputed that the Petitioner and Respondent's mark JESSENIA causes actual confusion or likelihood of confusion. ACR STIP

The marks are similar in sight, sound and meaning and create a similar commercial impression, and the goods are related. Confusion is likely because:

- a. The marks are extremely similar. They similar in sight, sound and meaning, each have a similar commercial impression.
- b. There is evidence of actual confusion between Petitioner and Respondent's Mark and use. If you search for "JESSENIA" on Amazon under Digital Music you will also see Respondent's song "Pride" for sale. Gallegos Decl. ¶ 35; Ex. F. The results page reveals Respondent's sound recordings alongside and commingled with sound recordings that Petitioner markets, promotes, and offers for sale under the JESSENIA mark.

- **Strength/fame of Petitioner's JESSENIA MARK**

3. Petitioner has used the JESSENIA MARK and built goodwill in her name and brand recognition and generated extensive publicity and nationwide media interest in her development. She has been featured on national television and has amassed hundreds of thousands and millions of followers and views on social media. *Petitioner Cancellation petition*

¶ 22

4. Respondent on the other hand has not alleged any facts similar nor has she shown any secondary meaning to her Jessnia mark regarding her first name.

## **I. DESCRIPTION OF THE RECORD**

5. The record consists of the Petition to Cancel the Respondent's Trademark, Petitioner's Motion for Partial Summary Judgment, with exhibits and declarations, each parties declarations and expert reports, Stipulation of Certain Facts to Be Entered Into the Record ("Stipulated Facts") [27 TTABVue], and the evidence submitted by the parties along with their ACR briefs. Pursuant to the Stipulated Facts, the parties reserved the right to object to relevance, materiality, and weight of the stipulated facts. No depositions were taken.

## **II. STATEMENT OF FACTS**

6. Petitioner is a singer, songwriter, actor, producer, musician, model, actor, live performer and spokesperson who has been continuously using the Mark Jessenia since at least 2009 under IC class 041. Gallegos Decl. ¶ 2.

7. Petitioner is harmed by the Respondent and has standing. Gallegos Decl. ¶ 4.

8. Petitioner has used the mark Jessenia at least as early as 2009, Petitioner has been continuously using the mark "JESSENIA" (the "Mark") throughout the United States on and in connection with personal appearances by an actor as a spokesperson for entertainment or educational purposes under IC Class 041. Gallegos Decl. ¶ 5., Exb. A.

9. Additionally, since July 11, 2013 Petitioner has used the JESSENIA mark in connection with entertainment services in the nature of live musical performances; entertainment services in the nature of singing and acting live; entertainment, namely, live music concerts; entertainment services, namely, dance events by a recording artist under IC Class 041. Gallegos Decl. ¶ 6; Exb. B.; Montano Decl. ¶ 6; and Marines Decl. ¶ 3-5.

10. Additionally, since April 2019, Petitioner has used the JESSENIA mark in

connection with songwriting in accordance with International Class 041. Gallegos Decl. ¶ 7.; Exb W.

11. Additionally since since October 12, 2018 Petitioner has used the JESSENIA mark in connection with Fashion modeling for entertainment purposes with cover art for her musical recordings. Gallegos Decl. ¶ 5.; Exbs C, E, and G.

12. Additionally, since October 12, 2018, Petitioner has used the JESSNIA mark in connection with the marketing and sale of International class 009-musical recordings; musical sound recordings; audio recordings featuring music; downloadable musical sound recordings; sound recordings featuring music. Gallegos Decl. ¶ 7., Exb C. Respondent did not release her first song until 2020. Gallegos Decl. ¶ 17., Exb. D.

13. Petitioner first made money in commerce with the Jessenia mark on July 11, 2013. Montano Decl. ¶ 6. She has continued to do so with sales and streams of her musical recordings. Gallegos Decl ¶ 23; Exb I.

14, Petitioner and Registrant's mark JESSENIA is identical in look, spelling and pronunciation. Gallegos Decl. ¶ 11.

15. Petitioner's first sound recordings offered under the Mark Jessenia, titled "Power Numbers," was released on October 12, 2018 digital downloads and for online streaming available through online retail partners including but not limited to Amazon, Itunes, Google music, Apple, Tidal and Spotify. Gallegos Decl.¶ 16; Exb. C.

16. Petitioner's next sound recording offered under the Mark, titled "Ammo," was released on October 1, 2019 via digital downloads and for online streaming available

through online retail partners including but not limited to Amazon, iTunes, Google music, Apple, Tidal and Spotify. Gallegos Decl. ¶ 17; Exb. C.

17. Petitioner has continued to release, market and offer for sale via online the aforementioned retail partners with the following: Phoenix EP. Gallegos Decl. ¶ 19; Exb. E.

- |                  |                   |
|------------------|-------------------|
| a. Sorry         | September 3, 2020 |
| b. Excuse        | September 3, 2020 |
| c. Not Today     | September 3, 2020 |
| d. Phoenix       | September 3, 2020 |
| 4. Phantom Pain  | May 7, 2021       |
| 5. Angel of Mine | May 8, 2021       |

18. Respondent released her first song in 2020 after Petitioner. Gallegos Decl. Ex. D.

19. Respondent has only been using JESSENIA offering for sale in commerce her musical recordings online since 2020. Gallegos Decl. ¶ 20; Exb. F.

20. Petitioner has expended significant sums of money promoting her sound recordings under the Mark by way of website and marketing all bearing the Mark. Gallegos Decl. ¶ 22; Exb. H.

21. On February 23, 2021, Registrant obtained a registration with the U.S.P.T.O for the identical Infringing Mark. (see Registrant's JESSENIA, Registration, 6278898 (the "Registration"). Registrant identifies her date of first use in **commerce** of the Infringing Mark as August 25, 2016. See the Registration. The following goods and services:

International Class 041 for the following goods and services:

G & S; Songwriting; Entertainment services in the nature of live musical performances; Entertainment services in the nature of singing and acting live; Entertainment, namely, live music concerts; Fashion modeling for entertainment purposes; Personal appearances by an actor as a spokesperson for entertainment and education purposes; Entertainment in the nature of dance performances; Entertainment services in the nature of development, creation,

production and post-production services of multimedia entertainment content; Entertainment services, namely, dance events by a recording artist.

22. Respondent is also seeking protection under IC class 009 yet did not file a basis under this class.

23. Registrant does not identify any limitations on the channels of trade or class of consumers in its description. In fact, Registrant offers for sale its sound recordings under the Infringing Mark through the exact same online retail outlets using Amazon, Google Music, Apple, Spotify and Tidal. Gallegos Decl. ¶ 23; Exbs. C, D, E and F. Visitors that go to [www.amazon.com](http://www.amazon.com) and select digital music and then search for the term “JESSENIA” are directed to sound recordings of both Petitioner and Registrant. Gallegos Decl. ¶ 34; Exb. F.

24. Similarly, when you perform a google search on [www.google.com](http://www.google.com) for the term “Jessenia music” and then click the **images** tab you will see confusion with the mark JESSENIA as it lists all my album covers and also includes Respondent’s image for JESSENIA songs at image 3, 12, and 13. Gallegos Decl. ¶ 25; Exb. J.

25. When you perform a google search for “Jessenia music”, Respondent’s artist profile is commingled on the right of Petitioner’s songs and videos causing a likelihood of confusion. Gallegos Decl. ¶ 26; Ex. K.

26. When you perform a google search on [www.google.com](http://www.google.com) for the term “Jessenia spotify” you will see the first two (2) results are confusing which one is the Petitioner. The first result is Petitioner, but the second result is the Respondent each showing and confusing the same mark JESSENIA of which Petitioner used first. Gallegos Decl. ¶ 27;



Ex. L.

27. Respondent has a BMI account number as 550744660 and has only been with BMI since April 1, 2019 and an end date of September 30, 2021 as referenced in her own specimen in her trademark application. See registration.

28. Petitioner has a BMI account number of 550266050. Petitioner, on the other hand has been registered with BMI as of September 2012 with account number 550266050. Petitioner was registered with BMI 6.5 years prior to Respondent. Petitioner either wrote or co-wrote the following songs: “Not Today” (4/2019), “Phoenix” (12/2019) and “Years and Tears” (3/20) under the JESSENIA Mark as the artist. Gallegos Decl. ¶ 23; Exb. W.

29. Respondent’s website is similar and confusing to the public and consumers. Petitioner owned and operated [www.itsjessenia.com](http://www.itsjessenia.com) from around January 1, 2018 to July 2020 when it sold at an online auction so she had to set up [www.itsjessenia.net](http://www.itsjessenia.net). Gallegos Decl. ¶ 28 ; Exb. N. She had a credit card on file for auto payment and it expired so she had to create the domain to switch from .com to .net.

20. Respondent set up her webpage to confuse the public on January 16, 2020. Gallegos Decl. ¶ 29; Exb. O. Petitioner’s prior page [www.itsjessenia.com](http://www.itsjessenia.com) was still active and published and the Respondent had notice of it. Respondent named her page <https://jesseniaofficial.com/> to confuse and make it look as if she was the first to use JESSENIA. Gallegos Decl. ¶ 30; Exb. P.

21. Petitioner has spent time and money amassing a loyal following on social media

and Instagram and Petitioner and Respondent's instagram handles are confusingly similar. Petitioner's Instagram name is "IamJessenia" and she has 533,000 followers and had this profile name since around 2017 of which was prior to Respondent. Gallegos Decl.¶ 31; Ex. Q.

22. Respondent goes by the IG handle of "thisisjessenia" and has 300 followers Gallegos Decl.¶ 32; Ex. R.

23. Respondent started her instagram page with her first post on September 10, 2019. Gallegos Decl.¶ 33; Ex. R.

24. One of Respondent's posts dated September 26, 2019 states her single "For my Love" is out now. Id. Petitioner went by "JESSENIA" before Respondent and released music before her with the earliest date of October 12, 2018. If you search for Jessenia on Amazon under Digital Music you will see her songs "Power Number", "Angel of Mine" and "Ammo" for sale. Gallegos Decl.¶ 34; Ex. E.

25. If you search for "JESSENIA" on Amazon under Digital Music you will also see Respondent's song "Pride" for sale. Gallegos Decl.¶ 35; Ex. F. The results page reveals Respondent's sound recordings alongside and commingled with sound recordings that Petitioner markets, promotes, and offers for sale under the JESSENIA mark. Id.

26. Similarly, this problem is further compounded by the fact that Respondent's sound recordings now appear as part of Petitioner's catalog of sound recordings offered on certain music sites. For example, If you search for Jessenia as an artist on Apple music at <https://music.apple.com/us/search?term=jessenia>, the Respondent's music videos "Pride",

“For My Love” and “Power” are commingled at the bottom with Petitioner’s songs and videos. As demonstrated in Exhibit J (second screenshot), Apple Music has mistakenly included Respondent’s video “For My Love” actually listed on Petitioner’s Artist page under top videos under the confusingly similar and identical JESSENIA mark. Gallegos Decl.¶ 36; Ex. J. Consumers of Petitioner’s sound recordings therefore are likely to be confused by Registrant’s continued use of the identical JESSENIA mark.

27. The same confusion is also present on TIDAL music service. Petitioner’s TIDAL artist page is located at <https://tidal.com/browse/artist/7168705>. Respondent’s album Love and Madness is listed under Petitioner’s albums on her artist profile with a 2021 date. Gallegos Decl.¶ 37; Ex. S. These are examples of the type of a likelihood of confusion that now exists in the marketplace as a result of Respondent.

### **III. ARGUMENT**

#### **A. Respondent has not show secondary meaning under common law in her first name in her initial registration or in this cancellation proceeding**

28. A showing of secondary meaning is required to protect a name as a mark. This Means that a personal name can be protected as a trademark only if the owner can prove that, through use, the name has acquired distinctiveness or made an impact on the buying public. Under common law, the secondary meaning requirement applies to last names alone, first names alone, and the combination of both. In contrast, the Lanham Act requires secondary meaning as a condition of registration only for marks that are “primarily merely a surname,<sup>1</sup> or only last names. *McCarthy on Trademarks and Unfair Competition* § 13:28 (4th ed.).

Respondent has not presented any evidence showing secondary meaning in her first name. Respondent did not demonstrate acquired distinctiveness showing her mark Jessenia has gained a significant meaning among the consuming public that is different than the dictionary meaning of the mark for her first name and is no source indicator for the goods or services.

*Petitioner's Expert Daniel Watson Declaration.*

## **B. PRIOR USE IN COMMERCE**

29. Respondent stated her first song was published on Spotify on January 1, 2020 and was titled "For My Love". *Exhibit B. Respondents response to Interrogatory 7 and Jessenia Gallegos Declaration Exhibit D.*

Respondent further stated the following songs were released:

Pride: January 3, 2020

Dreamlife: January 10, 2020

Power: February 1, 2020

Love & Madness Album: March 12, 2021 *Exhibit B. Respondents response to*

*Interrogatory 9.*

30. Petitioner's sound recordings offered under the Mark Jessenia, titled "Power Numbers," was released on October 12, 2018 digital downloads and for online streaming available through online retail partners including but not limited to Amazon, Itunes, Google music, Apple, Tidal and Spotify. *Gallegos Decl. ¶ 16; Exhibit C.*

31. Petitioner released the song "Ammo" on October 1, 2019 under the JESSENIA Mark. See *Jessenia Gallegos Declaration Exhibit C.* This date is earlier than the Respondent's undisputed answer in the interrogatories.

32. Petitioner began marketing, offering for sale via distributor Bquate and offered

digital downloads and for online streaming available through online retail partners including but not limited to Amazon, iTunes, Google music, Apple, Tidal and Spotify. Since such times, she has continuously offered for sale throughout the United States the sound recordings via those channels See *Jessenia Gallegos Declaration Exhibit E*. Additionally after the prior two releases she released, marketed and offered for sale the songs below with the same online partners

1. Phoenix EP
  - a. Sorry September 3, 2020
  - b. Excuse September 3, 2020
  - c. Not Today September 3, 2020
  - d. Phoenix September 3, 2020
4. Phantom Pain May 7, 2021
5. Angel of Mine May 8, 2021

### **C. Applicable Legal Standard**

33. The parties have already stipulated and it is undisputed that there is a likelihood of confusion. *ACR STIP*

34. Section 2(d) of the Lanham Act prohibits registration of a mark that consist of or is comprised of a mark that “so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the application, to cause confusion, or to cause mistake, or to deceive . . . .” 15 U.S.C. § 1052(d). Whether a likelihood of confusion exists is a question of law, determined on a case-by-case basis, applying the relevant DuPont factors. *In re E. I. du Pont de*

*Nemours & Co.*, 476 F.2d 1357, 1361 (CCPA 1973). The DuPont factor most significant here – similarity of the goods and services offered by the parties – overwhelmingly support Petitioner. .2 DuPont Factor No. 3: The Parties’ Goods and Services Are Identical

35. In view of the identical nature and obvious overlap in the goods and services claimed in Respondent’s prior registration and Petitioner’s cancellation petition consumers would be likely to attribute them to the same source.

### **FIRST USE IN COMMERCE**

36. Respondent has not shown any receipts where the mark was used in commerce to make money. *Petitioner’s Expert Daniel Watson Declaration*. Petitioner on the other hand has shown that she has made money with her Mark. *See Exhibit I attached to Gallegos Declaration with the MSJ*.

37. Further, Respondent also went by her full name “Jessenia Mills” and not just “Jessenia” in advertisements and magazine articles. *Petitioner’s Expert Daniel Watson Declaration*. Those two articles are from Dark Magazine and Shout Out LA websites last accessed April 1, 2023 respectfully at

<https://www.magazinedark.com/post/meet-jessenia-mills-singer-actress>

and <https://shoutoutla.com/meet-jessenia-mills-singer-songwriter-jessenia/> *Id.*

### **IV. CONCLUSION**

38. Petitioner respectfully submits that the Respondent’s Mark creates a likelihood of confusion with Petitioner’s Mark as stipulated to, Petitioner has first use of the mark Jessenia

in commerce and Respondent has not shown secondary meaning regarding the mark. As such, Petitioner respectfully requests that the Respondent's trademark registration be canceled.

Dated: July 31, 2023

Respectfully Submitted,

**By: /Nicholas A. Pagliara/**

Nicholas A. Pagliara, Esq.

Attorney for Petitioner

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## **Exhibit A**

Declaration and Expert Report of Petitioner's Expert, Daniel Watson IN SUPPORT OF HER CANCELLATION PETITION AND FOR CONSIDERATION UNDER ACCELERATED CASE RESOLUTION



EXPERT REPORT OF DANIEL WATSON  
ON BEHALF OF JESSENIA GALLEGOS

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

Jessenia Gallegos	)	Cancellation No. 92077063
	)	
Petitioner,	)	In the matter of trademark registration
	)	Registration No. 6278898
V.	)	
	)	For the mark JESSENIA
Jessenia Mills	)	
	)	Registered on February 23, 2021
Respondent	)	
	)	

**DECLARATION OF EXPERT DANIEL WATSON**

I, Daniel Watson, declare as follows:

I submit this declaration on behalf of Petitioner in this cancellation proceeding 92077063 in the matter of trademark registration No. 6278898 for the mark "JESSENIA" Respondent was given a copy of my expert report in the timely manner previously with the deadlines. I understand that the parties have stipulated to include this declaration as part of the record in the ACR stipulation. I submit this declaration pursuant to the agreement of the parties and in lieu of a testimonial deposition.

I am over the age of 18 and competent to testify. I have personal knowledge of the matters or have learned about them from the record and research as stated in this declaration and declare truthfully.

I have been retained by Petitioner and her counsel to provide expert services on this

cancellation proceeding as the above captioned matter.

For my work in connection with this matter, I am being compensated at a courtesy rate of \$150.00 per hour. My compensation is in no way contingent on the opinions I reach in the outcome of the proceeding.

Attached hereto as Exhibit 1 is a copy of the report I drafted for this matter titled "Expert Report of Daniel Watson" (the "Report") and its accompanying attachments.

### **Background**

I am a Vice President of digital marketing strategies, entrepreneur, and creative director. I received a Bachelor's of Fine Art in Commercial Photography in 2005 from Cazenovia College. I received a Master's of Fine Art in Fashion Editorial Photography in 2010 from the Academy of Art University. My professional experience is included in the beginning of my expert report. I have technical knowledge in photos, videos and dates and the metadata of when and where data is posted.

### **Summary of Conclusions**

In my expert opinion, from the facts on the record that I learned about and in my research, it appears that Jessenia Gallegos has first use of the JESSENIA mark in her goods and services compared to Jessenia Mills use of JESSENIA. Ms. Mills did not submit any proof of first use in commerce related to her mark. It also appears that Jessenia Mills went by her full name not just Jessenia in the two articles from Dark Magazine and Shout Out LA website both last accessed on April 1, 2023 respectfully at

<https://www.magazinedark.com/post/meet-jessenia-mills-singer-actress> and

<https://shoutoutla.com/meet-jessenia-mills-singer-songwriter-jessenia/>

I also have experience in conducting surveys and readership polls and Respondent did not ever offer any evidence on the record that her Mark "Jessenia" obtained secondary meaning or "acquired distinctiveness" implying that the mark "Jessenia" has gained a significance meaning among the consuming public that is different than the dictionary meaning of the mark for her first name. Respondent's first name as a trademark Seems to being used merely to identify the individual who owns or uses the mark, rather than as a source indicator for goods or services.

I declare under penalty of perjury under the laws of the United States that the foregoing Is true and correct.

Executed this \_\_\_\_ 5th \_\_\_\_ day of April 2023.

*Daniel Watson*  
Daniel Watson



**EXHIBIT 1**

## **I. INTRODUCTION**

### **A. Scope of Report**

1. I, Daniel Watson, have been retained by Jessenia Gallegos and her counsel, Pagliara Law Group PA, to provide my independent professional opinions as a technical expert in this matter.

2. I understand that this is a trademark dispute between Jessenia Mills, the current holder of the trademark JESSENIA, and Jessenia Gallegos, who is challenging Ms. Mills' trademark registration under the FIRST TO USE IN COMMERCE trademark laws.

3. Ms. Gallegos is challenging Ms. Mills rights to the trademark, claiming FIRST USE IN COMMERCE dates of April 21, 2013. In support, Ms. Gallegos has submitted 16 specimens in the form of JPG computer graphic files to back up such a claim.

4. I have been asked to examine and analyze the specimens submitted by Ms. Gallegos with her application to determine if the filed documents prove a FIRST USE IN COMMERCE date of April 21, 2013, as claimed.

## **II. BACKGROUND, QUALIFICATIONS AND COMPENSATION**

### **A. EDUCATION**

5. I am a Vice President of digital marketing strategies, entrepreneur, and creative director. I received a Bachelor's of Fine Art in Commercial Photography in 2005 from Cazenovia College. I received a Master's of Fine Art in Fashion Editorial Photography in 2010 from the Academy of Art University.

### **B. PROFESSIONAL EXPERIENCE**

6. A high-performance creative leader with 18 years of experience developing, implementing and optimizing effective strategies that maximize customer adoption, retention and lifetime value. Developed interactive experiences, 360° branding, consumer and influencer marketing, e-commerce P&L, app and web design, and photo art direction for diverse brands and agencies.

7. 03-2011 to Present Founder and Chief Executive Officer at LIVID Magazine. Creative: Created a work environment based on the identity of one's individuality and diversity to promote a healthy and positive team culture through mentorship.

8. Kept up to date with innovative, art direction, creative work across industries; shared internal and external best practices with colleagues; inspired others to be more creative and think in new ways to engage and entertain people.

9. Built a comprehensive content marketing plan, digital design, including daily online features, articles, weekly newsletters with over 875k subscribers, monthly photoshoots, and quarterly team travel shoots abroad.

10. Developed and reviewed creative briefs that provide strategic insight and creative inspiration.

11. Designed, implemented and managed digital marketing programs focusing on building awareness, enhancing website user experience, driving conversions and customer acquisition to refine the digital media outlook of content subscription services.

12. Directed and evaluating all marketing and branding activities to promote the LIVID voice and brand recognition digital and print editorial content through storytelling, 360 campaigns, and market research.

13. Leadership: Ownership of strategic road-mapping to direct and evaluate all marketing and branding digital products to promote the LIVID brand recognition online.

14. Managed a core team of 15 that successfully defined and tracked KPIs for the release of 28 print magazines that average 200-250 pages per issue with a distribution of 40,000 per year.

15. Developed sponsor and tourism relationships throughout North America, Europe, and Southeast Asia markets. Result: Capitalized on growth opportunities and drove new business through the development and launch of content creation.

16. Developed a corporate recruitment model of hiring editors, directors, interns to establish communication virtually and in-person in our three New York, Paris, and London locations.

17. Worked cross-functionally with art, marketing development, editorial, sales, project management, and customer services on product development goals to meet deadlines and budgets.

18. Led UI/UX design visions to keep the company up-to-date with market trends and competitions.

19. Drove a holistic site strategy for the editorial division, using data-driven insights to create a seamless customer experience on-site. Continuously understand customer behavior better and gain actionable insights to inform marketing and site enhancements.

20. Ensured the teams were on track to achieve topline sales plans, managed key drivers behind sales, including traffic, average order value, and conversion.

21. Growth: Led and ensured the magazine production was on track in reaching goals, tactically and strategically pitching business from \$ 1 million to \$6.7 million globally.

22. Delivered over 500k in digital assets to a global marketing with tourism partnerships throughout North American, Europe and Southeast Asia markets.

23. Built dashboards to monitor the metrics that directly and indirectly drive digital growth. Conducted data analysis and market research to identify new opportunities.

24. Reported incremental KPI lifts and ROI at 100% based on testing data; developed 360 activation plans with Web Operations, Site Strategy, Merchandising, and Marketing teams for evergreen strategy.

25. Effectively managed annual marketing budget, +15% sales increased over LY with a +6% increase in customer traffic.

26. Activated interactive advertising campaigns that increased website traffic year over year by 32% and increased e-commerce by 17%.

27. 10.2020 to 06.2022 - VP, Digital Marketing and Strategy / Web Operations at HomeTality. Creative: Oversee the creation of content for corporate marketing collateral, brand language, 360 campaigns, website, blog, social media, through storytelling and other initiatives.

Establish compelling proof of concepts and build case studies that articulate media, connections and influence capabilities and support the business unit's positioning on a global level.

28. Built a three-tiered KPI tracking system that grew stretcher sales by 35% through new direct mail/email promotions and optimized sales trading and online messaging utilization.

29. Created custom SEO strategies that include keyword and competitor analysis, mapping keyword-ranking strategy, writing of geographic, keyword-specific titles, digital design and meta tags, and link-building.

30. Leadership: Manage the cross-functional digital team, including all e-Commerce initiatives that drive sustainable sales, UX & Design, Enterprise Reporting, and Production Services to drive and increase market share and profit for luxury vacation rentals across the global market of the Americas.

31. Responsible for people management duties, including compensation decisions, hiring/firing, performance appraisals, coaching, and development. Identify competitors and evaluate their strategies and positioning, and devise counter-strategies.

32. Contribute to the short and long-term strategies of the organization through a review of business practices, and lead the development of an innovative, highly competent marketing team that is in alignment with those strategies.

33. Foster a collaborative team atmosphere that empowers team members to look for opportunities to support each other, improve workflows and the user's experiences.

34. Growth: Identify, research, implement new revenue opportunities in current and potential markets.

Work closely with the Head of Media and Finance teams on tracking of financial performance to ensure targets are met through organic growth, and net new properties and clients.

35. Deliver a profitable, scale/rapid growth for an e-Commerce business digital marketing experience focusing on vision, strategy, creative thinking, and innovation.

36. Lead business development initiatives, prepared proposals with a 70%-win rate and achieved a compound annual revenue growth rate to the budget of 28%.



37. 12-2017 to 12-2018 Head of Content at Vanish Media Creative: Art Direction, Designed, developed, and deployed the build of vanish.today interactive web site (CMS, PHP, CSS, AJAX, JavaScript, MySQL, Apache, Linux, UX \ UI).

38. Drove the site 360 campaigns and content calendar by testing, learning, and optimizing at every step curating digital content with a six to twelve-month lead for the site by creating digital calendar roll-outs with notifications alerts using google documents to sync in real-time.

39. Created a social media strategy to maximize user engagement, follower and subscriber base.

Partner with marketing on audiences and traits to build an end-to-end personalization and testing strategy on-site and throughout all our channels.

40. Manage and work independently, under tight deadlines, while juggling multiple projects.

41. Leadership: Oversaw all marketing and communication content across multiple platforms to grow brand awareness.

42. Supported the team on critical strategic and creative initiatives and led day-to-day operations, communications, and planning for content creation. Supervised writers and editors to ensure that the content was created according to VANISH's style guide.

43. Developed competencies and processes required for marketing strategies and visuals used for the growth of sponsorship and investors to ensure effective workflow.

44. Partnered with local stakeholders to design campaign plans and tactical strategies that ensure all brand creative components are aligned across and impact different channels and teams.

Liaised with the public relations, marketing, IT, and customer relations departments to ensure consistency in the brand message.

45. Ensured consistency of marketing materials proposals, fliers, and apparel roll-out Digital advertising materials consisted of: email, display ads, search ads, web banners, pop-ups, floating ad expanding, and news feed ads.

46. Engaged customers and prospects via social media channels to build a strong community around a branded community, analyzing relevant metrics to drive UI improvements and ROI.

47. Growth: Drove content growth and traffic through blog and article marketing.

48. Created performance reporting dashboards and deliver weekly and quarterly results for all Innovation digital initiatives impacting: ratings + reviews capture, virtual scaling solution engagement, user-generated content, Insider membership enrollment and engagement, copy testing, cross-sell strategy, PLP sorting optimizations.

49. Increased subscriber's email click-to-open rate by 86.5% year over year by the end of Q4 2018.

### C. PUBLICATIONS

50. I have produced and published 28 print magazines globally. I was the cover story for the alumni magazine for Cazenovia college talking about my professional experience. I have been published on numerous newspapers worldwide for my travel and culture experience with LIVID Magazine.

### D. COMPENSATION

51. I am compensated in this matter at the courtesy rate of \$150. My compensation is in no way affected by the outcome of this litigation.

### E. MATERIAL CONSIDERED

52. In connection with my work on this matter, in addition to my own background and experience, I have reviewed and considered all the materials filed in this case to date, in addition to any internet sources cited by footnote throughout this report.

## III. SUMMARY OF OPINIONS

53. My opinions and the bases for them are set forth in this report. In this section, I summarize my opinions based on my study:

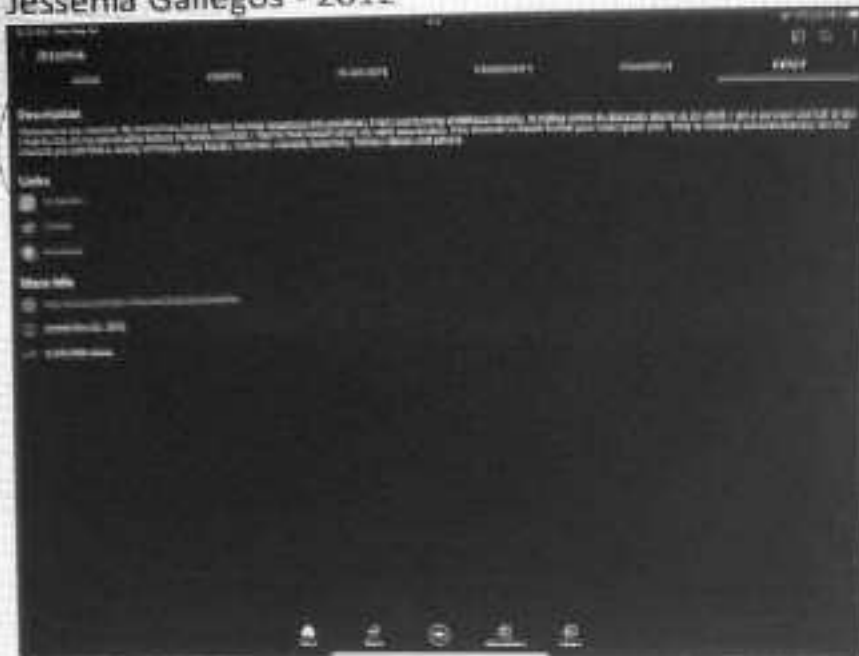
- I went through both Ms. Mills and Ms. Gallegos web presence, music, social media accounts and featured articles to compare dates.
- I looked for the following dates of: Joined, Started, Created, Posted and Featured.
- Ms. Gallegos has FIRST USE IN COMMERCE usage as stated April 21, 2013.
- Ms. Mills latest feature Articles for 2020 and 2021 has shown she still goes by her full name Jessenia Mills and not by "JESSENIA".
- The results of my analysis of 11 specimens are summarized below:

## IV. ANALYSIS BREAKDOWN FIRST USAGE IN COMMERCE

Jessenia Gallegos	Jessenia Mills	Commerce Outlet
July 2020	Jan 2020	Personal websites
Oct 2012	June 2013	YouTube
Aug 20, 2015	Jan 26, 2021	First Video on YouTube
In love with the DJ / Single 2020	For My Love / Single 2020	Spotify
2018	2020	Apple Music
2020	2020	Amazon Music
2018	2021	Tidal
Vive Katerin / TV Series 2013	One Leg / Short Film 2020	IMDB
First Post / April 21, 2013	First Post / Sept 2019	Instagram



## YouTube Date Created Account Jessenia Gallegos - 2012



IMG\_0668.PNG

## Jessenia Mills - 2013



IMG\_F034391054CC-1.jpeg

## First Video on YouTube

Jessenia Gallegos - Aug 20, 2015



IMG\_A8628FB102B6-1.jpeg

## Jessenia Mills - Jan 26, 2021



IMG\_32A99B7C2966-1.jpeg



Spotify First Release

Jessenia Gallegos - In love with the DJ / Single 2020



IMG\_0680.PNG

Jessenia Mills - For My Love / Single 2020



IMG\_0670.PNG

Apple Music First Release  
Jessenia Gallegos – 2018



IMG\_49F2451142A8-1.jpeg

Jessenia Mills - 2020



IMG\_0673.PNG

## Jessenia Mills – 2020 Feature Article Dark Magazine



TESSA | July 8, 2020 | 4:48 PM

### MEET JESSENIA MILLS: SINGER & ACTRESS

Photo by [illegible]



IMG\_0689.PNG

## Jessenia Mills – 2021 Feature Shout Out LA



### SHOUT OUT LA

Meet Jessenia Mills:  
Singer-Songwriter  
Jessenia



## VI. CONCLUSION

I declare under penalty of perjury that the foregoing is true and correct.  
Dated September 19, 2022



Daniel Watson  
Queens, New York



**EXHIBIT B**  
**Respondent's responses to Petitioner's Interrogatories**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Jessenia Gallegos

Petitioner,

V.

Jessenia Mills

Respondent

Cancellation No. 92077063

In the matter of trademark registration  
Registration No. 6278898

For the mark JESSENIA

Registered on February 23, 2021

**PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT**

TO:

Carena Brantley Lemons  
THE LEMONS LAW FIRM, PLLC  
1921 North Pointe Drive,  
Suite 225 Durham, North  
Carolina 27705

DEMAND is hereby made of Respondent, for certified answers to the following interrogatories within the time prescribed by the Rules.

PAGLIARA LAW GROUP

Attorneys for the Petitioner, Jessenia

Gallegos By: Nicholas Anthony

Pagliara/

Nicholas Anthony Pagliara, Esq.

Dated: February 24, 2022

## INSTRUCTIONS AND DEFINITIONS

A. Petitioner means Jessenia Gallegos

B. Respondent means Jessenia Mills

C. Occurrence means the incident as set out in Petitioner's complaint, which gave rise to this action.

D. Identify a person means to state his or her full name, address and telephone number; his or her occupation; the name, address and telephone number of his or her employer, if known; and any family, social, recreational, professional or employment relationship you have with the person.

E. Identify a document (including a statement) means to describe briefly the form of the document; describe generally the subject of its contents; state the date and place of preparation or mailing; and identify the person or firm who prepared the document, the person or firm who received it, and the person or firm who has possession or control of the original copy of the document.

F. The term "document" includes, without limitation:

(i) All written or printed matter of any kind, including without limitation correspondence, memoranda, notations, notes, diaries, desk calendars, statistics, letters, telegrams, telexes, teletypes, telefaxes, telecopies, minutes, pamphlets, books, bulletins, computer printouts, state and federal tax returns, graphs, charts and ledgers, including the originals, drafts, and non-identical copies of originals and drafts, whether different from the originals or drafts by reason of any notation made thereon or otherwise;

(ii) Graphic or oral records or representations of any kind, including without limitation blueprints, diagrams, drawings, sketches, pictures, models, plans, specifications, details, photographs, charts, graphs, microfiche, microfilm, videotape, audiotape, phonorecords, motion pictures or other audiovisual material;

(iii) Electronic or mechanical records or representations of any kind, including without limitation tapes, cassettes, and disks, including hard drives; and

(iv) Any and all additional sources of information or data compilations from which information can be obtained, translated, if necessary, by you through detection devices into reasonably usable form.

G. Each interrogatory must be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party must state the reasons for objection and must answer to the extent the interrogatory is not objectionable. All objections must be



signed by the attorney or person making the objection. All grounds for an objection is waived unless the party's failure to object is excused by the court for good cause.

H. The answers to the interrogatories must be signed by the person making them.

**INTERROGATORY 1.** Please identify yourself fully, giving your full name, residence, office address and occupation?

**ANSWER:**

Name: Jessenia Mills

Residence & Office Address: 2302 NASH ST N STE E WILSON, NC 27896

Occupation: Jessenia Productions

**INTERROGATORY 2.** In your specimen you originally submitted regarding Offbeats performance.

- a. What was the date of the performance?
- b. Was this performed for your high school?
- c. Was this performed for your college?
- d. Who was this performed for?
- e. Were you compensated for this performance?
- f. Was this performed under the name Jessenia Mills?

**ANSWER:**

- a. October 2017
- b. No.
- c. No.
- d. Public.
- e. Yes.
- f. No.

**INTERROGATORY 3.** When was your first use of the mark Jessenia related to your goods and services?

- a. What is the date?
- b. Where was the first use?

**ANSWER:**

- a. June, 2015
- b. Bill Ellis Convention Center.

**INTERROGATORY 4.** When was your first use in *commerce* of the mark Jessenia related to your goods and services?

- a. What is the date?
- b. Where was the first use in commerce?
- c. Were you paid money or compensated in any other way?
- d. If you were paid or received any money, then provide such copies of payment?

**ANSWER:**

- a. June 2015
- b. Bill Ellis Convention Center
- c. Yes.
- d. Not attainable after 7 years.

**INTERROGATORY 5.** What date did you first create your instagram account?

**ANSWER:**

August 23, 2019. This is public knowledge. It is also public knowledge Petitioner, Jessenia Gallegos went as Jessenia Vice on her Instagram and YouTube for her music releases. See Exhibit A below for "Power Numbers" that is in question of Petitioner's alleged first use.

**INTERROGATORY 6.** Regarding the name of your accounts.

- a. What is the name of your instagram handle?
- b. Did you ever change the name?
- c. What is the name of your website domain?
- d. Did you ever change the name?
- e. What is the name of your soundcloud?
- f. Did you ever change the name?
- g. What is the name of your instagram handle?
- h. What is the name of your twitter handle?
- i. Did you ever change the name?

**ANSWER:**

- a. @thisisjessenia
- b. The name of my Instagram page has never changed. It has always been Jessenia.
- c. [www.jesseniaofficial.com](http://www.jesseniaofficial.com)
- d. No.
- e. Jessenia
- f. No.
- g. Answered on part A.
- h. @thisisjessenia
- i. No.



**INTERROGATORY 7.** What was the date your first song was published on Spotify and what was the name of that song?

**ANSWER:** My first song, For My Love was published on Spotify January 1, 2020. The song was released, however, on September 26, 2019 & registered with BMI. This is also public knowledge.

**INTERROGATORY 8.** What is the date you registered with BMI?

**ANSWER:** Objection in that the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive. Notwithstanding the foregoing objection, Respondent answers as follows: you can view my registrations with BMI since 2019 under the performance artist name "Jessenia". You can also publicly view the petitioner's performance names have been under "Jessenia Vice" & "Jessenia Gallegos", not "Jessenia". This includes their alleged first use "Power Numbers".

See Exhibit B below for "Power Numbers" that is in question of Petitioner's alleged first use. See Exhibit C for my performance name "Jessenia" for all of my releases.

**INTERROGATORY 9.** What are all the songs name and dates they were registered and/or released on BMI,spotify or any distributor?

**ANSWER:**

For My Love: September 26, 2019

Pride: January 3, 2020

Dreamlife: January 10, 2020

Power: February 1st, 2020

Love & Madness Album: March 12, 2021

**INTERROGATORY 10.** When and where was your song dream life released?

**ANSWER:** Dreamlife was released on all major music platforms. As stated on question # 9, it was released on January 10, 2020.

**INTERROGATORY 11.** What was the published date of the Dark Feature magazine article on you?

**ANSWER:** Objection in that the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive. Notwithstanding the foregoing objection, Respondent answers as follows: There are multiple articles about me as the artist Jessenia by Dark Magazine, including but not limited to: June 8, 2020.

**INTERROGATORY 12.** Identify and describe use of the JESSENIA Mark by Applicant specifically prior to 2018?

**ANSWER:** Objection in that this interrogatory the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive. Notwithstanding the foregoing objection, Respondent answers as follows: as Registrant of the mark "Jessenia", this is answered on question #4. And the uses were for the same classes it was registered for.

**INTERROGATORY 13.** Describe in detail all goods and/or services that have been offered, are being offered, or will be offered by you under the JESSENIA Mark?

**ANSWER:** The uses were, still are, and will continue to be for the same classes it was registered for.

**INTERROGATORY 14.** Describe the geographic scope of the goods and/or services offered or that were offered by you under the JESSENIA Mark?

**ANSWER:** Both U.S. & Internationally. Wherever Goods & Services are sold.

**INTERROGATORY 15.** Identify and describe the channels of marketing and/or channels of trade for any and all products and/or services offered by you under the JESSENIA Mark?

**ANSWER:** Both U.S. & Internationally. Wherever Goods & Services are sold.



**INTERROGATORY 16.** Describe fully any advertising you or anyone connected to or affiliated with you uses or has used to promote the goods and/or services offered under the JESSENIA Mark??

**ANSWER:** Objection in that this Interrogatory is outside the scope of discovery. Further, this is business-related and will not be shared.

**INTERROGATORY 16.** Describe fully any instances where your use of the JESSENIA Mark caused confusion vis-a-vis Petitioner's JESSENIA Mark?

**ANSWER: Note: This is a duplicate numerical "Interrogatory 16."** As the Registrant of the mark "Jessenia", I caused no confusion. Petitioner's infringement of my mark, Jessenia, occurred during their redistribution on all major music platforms via Bquate & Symphonic Distribution such as Amazon Music.

See Exhibit D which shows my official Amazon Music Artist Page

See Exhibit E which shows Petitioner's original Amazon Music Artist Page

**INTERROGATORY 17.** Identify each person with knowledge of any songs that have helped you produce them?

**ANSWER:** Objection in that the discovery sought is outside the scope of discovery, overly broad, unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive. Moreover, this is business-related and will not be shared.

**INTERROGATORY 18** Identify each person with knowledge of the content, goods and/or services?

**ANSWER:** Objection in that the discovery sought is overly broad, unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive. Notwithstanding the foregoing objection, Respondent answers as follows: The public & previously provided witnesses.

**INTERROGATORY 20.** Identify each person you intend to rely on in this Cancellation proceeding?

**ANSWER: Note: There is no Interrogatory 19.** Objection in that the discovery sought is unreasonably cumulative or duplicative to Interrogatory 18.



**INTERROGATORY 21.** Identify each person who supplied any information or answers for your responses to these interrogatories?

**ANSWER:** No one. All information is public.

**INTERROGATORY 22.** Describe in detail the facts supporting your claim that you have a bona fide intent to use the JESSENIA MARK?

**ANSWER:** Objection in that the discovery sought can be obtained from some other source that is more convenient, less burdensome, or less expensive. Notwithstanding the foregoing objection, refer to my Trademark Registration #6278898. Registration is already in use.

**INTERROGATORY 23.** Describe in detail the facts and circumstances surrounding the first time you heard of or became aware of Petitioner's Mark and did you ever block her instagram account?:

**ANSWER:** The first time I became aware of Petitioner was upon her infringement of my registered mark, specifically when her music was *redistributed* under Amazon Music to my Artist page. This prompted her infringement to be visible on my music platforms and cause confusion for my audience. I don't recall blocking her Instagram account.

See Exhibit D & E.

**INTERROGATORY 24.** Describe fully your plans for expansion of the goods and/or services offered under the JESSENIA Mark?

**ANSWER:** Objection, in that the information sought is overly broad and outside the scope of discovery. Notwithstanding the foregoing objection, Respondent answers as follows: All expansion as necessary for my brand.

**INTERROGATORY 25.** When and where did you go by Jessenia Mills, including any magazine articles and any and all performances or singing?

**ANSWER:** I did not go by Jessenia Mills as that is my legal birth name, not an alias, that has and still is performing as "Jessenia". Petitioner, however, has gone under many aliases other than the registered mark prior to and after 2018.

See Exhibit F.

Submitted, this the 17<sup>th</sup> day of June 2022.

ATTORNEY FOR RESPONDENT

/s/ Carena Brantley Lemons  
Carena Brantley Lemons  
THE LEMONS LAW FIRM, PLLC  
NC State Bar # 28249  
1921 North Pointe Drive, Suite 225  
Durham, North Carolina 27705  
(919) 688-7799 Fax (866) 302-5417

## **PETITIONER'S EVIDENTIARY OBJECTIONS**

### **APPENDIX**

1. Respondent's proffered expert does not meet the requirements of an expert witness and is not competent to give an opinion as an expert witness pursuant to Rule 702 of the Federal Rules of Evidence. He does not have "expert by knowledge, skill, experience, training, or education [to] testify in the form of an opinion..." as "(c) the testimony is the product of reliable principles and methods; and (d) the expert has [not] reliably applied the principles and methods to the facts of the case." (F.R.E. 702)

2. Respondents first expert report should be stricken from the record as it states evidence and facts not part of this proceeding and is outside the scope.

3. Respondent's first expert report should be stricken from the record as it was not properly introduced to the record or attached to the final trial brief. The only one that was Introduced was the second expert report of Garry Kitchen on behalf of Jessenia Mills.

4. Respondent's brief mentions facts outside of the scope of this proceeding including a trademark application for "JJ" and should be stricken from the record and brief as it is not relevant.

For the reasons set forth in the Evidentiary Objections, Petitioner respectfully requests that the evidence and testimony be stricken and disregarded.

Dated: July 31, 2023

Respectfully Submitted,

**By: /Nicholas A. Pagliara/**

Nicholas A. Pagliara, Esq.

Attorney for Petitioner

Pagliara Law Group, P.A.

939 JFK Blvd East No. 2

Weehawken, NJ 07086

Telephone: (201)-470-4181

Facsimile: (201)-470-4181

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing FINAL ACR TRIAL BRIEF, Exhibits, and Evidentiary Objections were filed with the TTAB via the ESTTA and served, via electronic mail, to the following

Ms. Jessenia Mills counsel: **Carena@thelemonslawfirm.com**

Carena Brantley Lemons The Lemons Law Firm, PLLC

1921 North Pointe Drive, Suite 201

Durham, North Carolina 27705

Phone: 919.688.7799

Dated: July 31, 2023

**By: /Nicholas A. Pagliara/**

Nicholas A. Pagliara, Esq.

Attorney for the Petitioner